

Additionally, claimant alleged the Administrative Law Judge erred when he admitted into evidence reports by two separate environmental testing firms which contained the results of environmental tests completed at respondent's work facility after May 3, 1998.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The Appeals Board has jurisdiction to review the issue of whether claimant suffered a work-related injury. However, the question of whether certain reports from the environmental testing firms should have been admitted into the evidence at the preliminary hearing is not an issue subject to Appeals Board review. See K.S.A. 1997 Supp. 44-534a.

Claimant requested medical treatment for severe migraine headaches and alleged injuries she received to her low back. Claimant claims her severe migraine headaches are the result of exposure to a toxic work environment on May 3, 1998. She argues her low-back injury, specifically severe symptoms in the tail bone area, was the result of an accident which occurred while she was being transported to the hospital in an ambulance after the exposure.

On May 3, 1998, claimant reported to her customer service job at respondent's facility located in Junction City, Kansas. Claimant testified she noticed a strange odor in the locker room before she started to work. She was at work for approximately 45 minutes when she became dizzy and nauseous. Finally, she became so sick that she went into the restroom and vomited.

She then notified her supervisor of her sickness and she was advised to go outside to get some fresh air. While she was outside getting fresh air, other employees also came out of respondent's building with similar symptoms.

The respondent called ambulances to take approximately 20 employees to the hospital because of their sickness. Claimant testified, on the way to the hospital, the ambulance either stopped or abruptly slowed down which caused her to be thrown from her seat into the stairwell of the ambulance. Claimant testified she received multiple injuries as a result of this accident including contusions to her right elbow, neck, low back, and severe bruising to various parts of her body.

The hospital emergency treatment records were admitted into evidence at the preliminary hearing. Those records indicate claimant was treated for dizziness, nausea, and a right elbow contusion. Claimant was treated by emergency physician Dr. Donald L. Morgan on May 3, 1998, and also was seen by him the following day. Dr. Morgan prescribed Tylenol, ice, and physical therapy. Claimant was released by Dr. Morgan with no further treatment recommendations.

On May 11, 1998, claimant did seek further medical treatment through Dr. Eric D. Keating, chiropractor, who claimant had been treating with since 1996. Dr. Keating's medical records indicate he had treated claimant for low-back problems and migraine

headaches in the past. In fact, the doctor saw claimant for those conditions as recent as April 24, 1998, a few days before the May 3, 1998, incident.

Mike Collins, respondent's human resource manager, testified on respondent's behalf at the preliminary hearing. He acknowledged that on both May 1, 1998, and May 3, 1998, a large number of respondent's employees became ill with various symptoms such as nausea and dizziness while working for the respondent. The ill employees were treated for those symptoms at the local hospital emergency room.

Mr. Collins testified that following the May 3, 1998, incident, respondent temporarily shut down its facility. The respondent brought in two independent environmental testing companies who conduct various environmental tests on both the water and the air. Both of those reports were admitted into evidence and neither report specifically identified the problem. However, one of the reports concluded that a specific pathogen could not be directly identified as the causal agent, but a combination of conditions could have contributed to the symptoms the employees experienced. Respondent contends since neither of the environmental testing companies were able to specifically identify the toxic agent that caused the employee's symptoms, then there was insufficient proof that such symptoms were causally related to the respondent's facility.

The Appeals Board finds the Administrative Law Judge's preliminary hearing order that denied claimant further medical treatment should be affirmed. The only problem the Appeals Board has with the Administrative Law Judge's preliminary hearing order is it seems to find that the symptoms claimant experienced on May 3, 1998, were not causally related to the work environment. The Appeals Board finds claimant's testimony and hospital emergency records are persuasive that claimant's dizziness and nausea were causally related to the work environment at respondent's facility. Claimant testified that before she entered the facility, she had none of those symptoms. After claimant had been at work for a short period of time, she had a sense of an unusual odor. She then became dizzy, sleepy, and nauseous as she was working. Other employees experienced the same symptoms. Although the respondent was unable to identify a specific agent that caused the employees to be ill, the Appeals Board finds it is reasonable to conclude that the work environment caused claimant and other employees to become ill on May 3, 1998. Therefore, since claimant's illness was related to her work, any injury she received while she was being transported by ambulance to the hospital is also work related. See Taylor v. Centex Construction Co., 191 Kan. 130, 379 P.2d 217 (1963).

The Appeals Board finds the medical treatment claimant received at the hospital emergency room or through the emergency room physician, Dr. Morgan, and any referrals therefrom, should be paid by the respondent as authorized medical expenses. However, the Appeals Board also finds, as did the Administrative Law Judge, from the record as it currently exists, the claimant has failed to prove that her current need for medical treatment is related either to the exposure to a toxic work environment or to the injuries she received in the ambulance.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order Denying Medical Treatment entered by Administrative Law Judge Bryce D. Benedict dated June 3, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1998.

BOARD MEMBER

c: Walter P. Robertson, Junction City, KS
Anton C. Andersen, Kansas City, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director